

THE IMPLICATION OF Noncompliance WITH TREASURY'S COMPETENCY REQUIREMENTS

In 2007, in response to the capacity constraints bedevilling local government, the National Treasury issued regulations setting out minimum competency requirements which all municipal financial and supply chain management officials have to meet.

The regulations took effect on 1 January 2008, but gave a five-year period of grace within which all financial and supply chain management officials throughout the country were required to attain the minimum competency levels. For these officials, the countdown reaches zero on 1 January 2013.

The ambit of the regulations

The scope of the regulations includes financial officials as well as supply chain management officials of municipalities and municipal entities, at both senior and middle management levels. Financial officials include accounting officers (municipal managers), chief financial officers, financial officials at senior management level (known as 'section 56' managers) and other financial officials at middle management level (supervisors). Supply chain management officials include the heads of municipal supply chain management units and all managers reporting to them.

Competency framework

Accounting officers

The regulations require an accounting officer to have, or attain by 1 January 2013, at least a bachelor's degree and a higher diploma in a relevant field or a certificate in municipal financial management, five years' experience at senior management level, core managerial and occupational competencies, and financial and supply chain management competencies. A municipal manager therefore must have either NQF level 6, which translates to a three-year degree

and a higher diploma, or a certificate in municipal financial management.

Chief financial officers and other section 56 managers

When it comes to chief financial officers, other section 56 managers, supervisors, heads of supply chain management and the managers reporting to them, the regulations make a distinction between high-capacity and low-capacity municipalities.

High-capacity municipalities

The chief financial officers and other section 56 managers in high-capacity municipalities must have, or attain by 1 January 2013, at least NQF level 7. The guidelines issued to explain the regulations provide that NQF level 7 is equivalent to honours, a postgraduate certificate or diploma, or registration as a chartered accountant (in the case of chief financial officers). Chief financial officers and other section 56 managers in high-capacity municipalities must also have a minimum of seven years' experience at senior and middle management level (two of which must be at senior management level), core managerial and occupational competencies, and the required minimum competency levels in unit standards.

Low-capacity municipalities

In the case of low-capacity municipalities, the chief financial officers and other section 56 managers are required to have or attain at least both a bachelor's degree and a higher diploma in a relevant field or a certificate in municipal financial

management, as is the case with municipal managers. The experience required in this regard is a minimum of five years at middle management level.

Financial officers at middle management level

In the case of other financial officers at or below middle management level (supervisors), there is no difference between high- and low-capacity municipalities when it comes to qualification. They are all required to have, or attain by 1 January 2013, NQF level 5 in the fields of accounting, finance and/or economics (equivalent to a two-year diploma and occupational certificate), or the National Diploma in Public Finance Management and Administration. The only difference is with regard to the experience required. For high-capacity municipalities, they are expected to have five years' relevant experience, two of which must be at middle management level. For low-capacity municipalities, four years' relevant experience is required, one of which must be at middle management level.

Heads of supply chain management units

The heads of supply chain management units in high-capacity municipalities are required to have or attain by 1 January 2013 at least NQF level 6 or a certificate in municipal financial management (as is the case with municipal managers, section 56 managers and low-capacity municipality chief financial officers). The relevant experience required is either five years, two of which must be at the middle management level, or seven years in a role related to the position of the official. For low-capacity municipalities, the regulations require at least NQF level 5 or the National Diploma in Public Finance Management and Administration (as is the case with supervisors). The experience required is either four years, one of which must be at middle management level, or six years at any level in a role related to the position.

Supply chain management managers

The minimum competency level that supply chain management managers must have or attain by 1 January 2013 is similar to that of supervisors and heads of supply chain management units, ie NQF level 5 or the National Diploma in Public Finance Management and Administration for both high- and low-capacity municipalities. The work-related experience required is two years.

Training providers

The National Treasury, working together with South African Qualifications Authority (SAQA) and the Local Government

Sector Education and Training Authority (LGSETA), has put together the Municipal Finance Management Programme (MFPM), a training programme designed to enhance the skills of municipal financial management practitioners and help them meet the competency requirements by 1 January 2013. The MFPM has been structured in a way that addresses all the unit standards prescribed by the regulations and is aligned to the qualifications at NQF Level 5, the National Diploma in Public Finance Management and Administration (SAQA ID 49554), and NQF level 6, the National Certificate in Municipal Financial Management (SAQA ID 48965). These courses are provided through training providers accredited by the LGSETA, who are listed on the National Treasury website at <http://www.treasury.gov.za/legislation/mfma/training/Training%20Providers.pdf>.

Officials affected by the regulations are advised to avoid municipal finance management training that is not registered with SAQA and whose content has not been validated by the National Treasury. SAQA-registered and validated courses are consistent with the published unit standards and the legislative and policy frameworks, and are only provided by the accredited training providers listed on the Treasury website.

Furthermore, all affected officials are advised to review their existing qualifications and experience through an assessment conducted by assessors who are appropriately qualified and registered with the LGSETA. These assessors are able to determine the extent to which qualifications and experience meet the prescribed financial and supply chain management competency levels. For more information on training modules, please refer to the municipal finance management skills training programme learner guidelines and logbook at <http://www.treasury.gov.za/legislation/mfma/guidelines/MFM%20skills%20training%20programme%20Learner%20Guidelines%20And%20Logbook.pdf>.

Funding

The regulations provide that municipalities must assist their financial and supply chain management officials by providing resources and opportunities for training to attain the required competency levels within the five-year period of grace. Furthermore, the National Treasury has made the Financial Management Grant available to all municipalities. This grant may be applied towards the costs of financial management training, in accordance with the grant criteria.

Furthermore, the LGSETA administers a mandatory grant known as the skills grant, and other learnership grants designed to support municipalities and learners with training. All that is required of municipalities to access these grants is a workplace skills plan.

Possible impediments

Given the support enjoyed by municipalities, both in terms of finances and through the training being made available in all nine provinces, it should be possible for officials to attain the competency levels before the effective date of the competency framework. The only problem would be reluctance on the part of a municipality to release its best-performing officials to attend a course, with the risk of affecting the municipality's performance. It is particularly worrying for a municipality to have to send key officials, who have played a vital part in ensuring clean audit reports, away for training. However, municipalities are urged to help their officials attain the requisite competencies in time.

Contracts of defaulting officials

What are the implications for the existing contracts of officials who fail to meet the competency requirements? The Treasury regulations are not explicit. They simply state that the attainment of the competency levels within the set time frame must be included as a performance target in the performance agreements of the officials concerned.

They further state that a municipality may, before 1 January 2013, employ any person who does not meet the competency levels prescribed for the relevant position, provided that the continued employment of such officials is conditional on their attaining the required competency levels on or before 1 January 2013.

Does this mean that the defaulting officials will be out of a job from midnight on 31 December 2012? Will the contracts become invalid and lapse automatically by the operation of law?

The situation is clear with regard to contracts that expire before 1 January 2013: the municipalities will simply not renew them. The situation becomes more complicated, however, for those whose contracts extend far beyond 1 January 2013.

There would seem to be three ways of looking at this issue. One is that the employment, which is conditional, will become invalid by operation of

law because a vital condition has not been met. The National Treasury or provincial treasuries could then approach the courts for an order confirming the invalidity of the contracts should a municipality continue with the employment. The second is that the officials concerned would be in breach of express conditions of their employment, which constitutes grounds for dismissal. The third is to argue that several of the implicit duties of an employee – which include a duty to enter and remain in service, to further the interests of the employer, to maintain reasonable efficiency, and to be respectful and obedient – would have been breached, which constitutes grounds for dismissal.

In terms of case law, it is possible for contracts to lapse by operation of law where this is provided for by statute (ie a limitation of section 23(1) of the Constitution by law of general application within the meaning of section 36(1) of the Constitution). So the first question is whether the Treasury regulations qualify under this heading.

There are two components to this enquiry. The first is whether the regulations qualify as law. In *Larbi-Odam v MEC for Education (North West Province)* 1998 (1) SA 745 (CC), the Constitutional Court held that subordinate legislation applying to all educators in South Africa was a law of general application. On the strength of this interpretation, it seems that all forms of legislation (delegated or original) qualify as law.

The second component relates to the character or quality of the law. The law must be general in its application. It must be sufficiently clear, accessible and precise for those affected by it to ascertain the extent of their rights and obligations. It must also apply equally to all and must not be arbitrary in its application.

The Treasury regulations are subordinate legislation applying to all municipal officials in South Africa and as such are a law of general application.

The regulations have laid down a fair procedure by allowing employees a reasonable opportunity to obtain the new competency levels and by highlighting the objective necessity for the requirements in question.

Furthermore, the affected officials have been constantly reminded of the looming deadline. Consequently we suggest that the scheme put forward by the regulations constitutes fair labour practice and complies with the Labour Relations Act. It is now incumbent upon the affected officials to ensure that the looming deadline does not, as it passes, take their jobs with it.



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